

SANDERS LAW GROUP

Craig B. Sanders
100 Garden City Plaza, Suite 500
Garden City, NY 11530
Tel: (516) 203-7600
Email: csanders@sanderslaw.group
File No.: 124349
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Stephen Yang,

Plaintiff,

v.

Brooklyn Nets, LLC,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Stephen Yang (*“Plaintiff”*), by and through his undersigned counsel, for his Complaint against Defendant Brooklyn Nets, LLC (*“Defendant”*) states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement.
2. Plaintiff herein creates photographic images and owns the rights to these images which Plaintiff licenses for various uses including online and print publications.
3. Defendant owns and operates a social media account on Instagram named as brooklynettes (the *“Account”*).
4. Defendant, without permission or authorization from Plaintiff actively copied, stored, and/or displayed Plaintiff's Photograph on the Account and engaged in this misconduct knowingly and in violation of the United States copyright laws.

PARTIES

5. Plaintiff Stephen Yang is an individual who is a citizen of the State of New York and maintains a principal place of business 123-35 82nd Road, Kew Gardens in Queens County,

1 New York.

2 6. Upon information and belief, Defendant Brooklyn Nets, LLC, is a New Jersey
3 limited liability company with a principal place of business at 168 39th St, Unit 7, Brooklyn in
4 Kings County, New York and is liable and responsible to Plaintiff based on the facts herein
5 alleged.

6 **JURISDICTION AND VENUE**

7 7. This Court has subject matter jurisdiction over the federal copyright
8 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

9 8. This Court has personal jurisdiction over Brooklyn Nets, LLC because it
10 maintains its principal place of business in New York.

11 9. Venue is proper under 28 U.S.C. §1391(a)(2) because Brooklyn Nets, LLC does
12 business in this Judicial District and/or because a substantial part of the events or omissions
13 giving rise to the claim occurred in this Judicial District.

14 **FACTS COMMON TO ALL CLAIMS**

15 10. Plaintiff is a professional photographer by trade who is the legal and rightful
16 owners of photographs which Plaintiff licenses to online and print publications.

17 11. Plaintiff has invested significant time and money in building Plaintiff's
18 photograph portfolio.

19 12. Plaintiff has obtained active and valid copyright registrations from the United
20 States Copyright Office (the "*USCO*") which cover many of Plaintiff's photographs while many
21 others are the subject of pending copyright applications.

22 13. Plaintiff's photographs are original, creative works in which Plaintiff's own
23 protectable copyright interests.

24 14. Upon information and belief, Brooklyn Nets, LLC is the registered owner of the
25 Account and is responsible for its content.

26 15. Upon information and belief, Brooklyn Nets, LLC is the operator of the Account
27 and is responsible for its content.
28

1 16. The Account is a popular and lucrative commercial enterprise.

2 17. The Account is monetized in that it promotes Defendant's dance team and, upon
3 information and belief, Defendant profits from these activities.

4 18. On June 15, 2021, Plaintiff authored a photograph of the Brooklynettes mid
5 practice ("*Photograph 1*"). A copy of Photograph 1 is attached hereto as Exhibit 1: #1.

6 19. Plaintiff applied to the USCO to register Photograph 1 on or about June 23, 2021
7 under Application No. 1-10592210961.

8 20. Photograph 1 was registered by the USCO on June 23, 2021 under Registration
9 No. VA2 257 297.

10 21. On June 15, 2021 Plaintiff first observed Photograph 1 on the Account in a
11 posted dated June 15, 2021 (the "*Post*"). A copy of the screengrab of the Post including
12 Photograph 1 is attached hereto as Exhibit 2: #1.

13 22. On June 15, 2021 Plaintiff authored a photograph of 4 Brooklynettes dancers
14 posing in New York City ("*Photograph 2*"). A copy of Photograph 2 is attached hereto as
15 Exhibit 1: #2.

16 23. Plaintiff applied to the USCO to register Photograph 2 on or about September
17 14, 2021 under Application No. 1-10839899321.

18 24. Photograph 2 was registered by USCO on September 14, 2021 under
19 Registration No. VA 2 268 763.

20 25. On June 15, 2021 Plaintiff first observed Photograph 2 on the Account in the
21 Post. A copy of the screengrab of the Post including Photograph 2 is attached hereto as Exhibit
22 2: #2.

23 26. Without permission or authorization from Plaintiff, Defendant volitionally
24 selected, copied, stored and/or displayed Plaintiff copyright protected Photograph 1 and
25 Photograph 2 (hereinafter collectively referred to as the "*Photographs*") on the Account.

26 27. Upon information and belief, the Photographs were copied, stored and displayed
27 without license or permission, thereby infringing on Plaintiff's copyrights (hereinafter
28

collectively as the “*Infringements*” and singularly as the “*Infringement*”).

28. The Infringement includes a URL (“*Uniform Resource Locator*”) for a fixed tangible medium of expression that was sufficiently permanent or stable to permit it to be communicated for a period of more than transitory duration and therefore constitutes a specific infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1160 (9th Cir. 2007).

29. Each Infringement is a copy of the majority of Plaintiff’s original images that was directly copied and stored by Defendant on the Account.

30. Upon information and belief, Defendant takes an active and pervasive role in the content posted on its Account, including, but not limited to copying, posting, selecting, commenting on and/or displaying images including but not limited to Plaintiff’s Photograph.

31. Upon information and belief, the Photograph was willfully and volitionally posted to the Account by Defendant.

32. Upon information and belief, the Infringement were not posted at the direction of a “user” as that term is defined in 17 U.S.C. §512(c).

33. Upon information and belief, Defendant engaged in the Infringement knowingly and in violation of applicable United States Copyright Laws.

34. Upon information and belief, Defendant’s employees contacted Plaintiff after conversing with Plaintiff through the Account for express permission to use Plaintiff’s Photographs.

35. Upon information and belief, Defendant has knowledge of the Photographs licensing rates and discount packages.

36. Upon information and belief, Defendant willingly posts the Photographs on the accounts without purchasing licenses from Plaintiff.

37. Upon information and belief, Defendant has the legal right and ability to control and limit the infringing activities on its Account and exercised and/or had the right and ability to exercise such right.

1 38. Upon information and belief, Defendant monitors the content on its Account.

2 39. Upon information and belief, Defendant has received a financial benefit directly
3 attributable to the Infringements.

4 40. Upon information and belief, the Infringements increased traffic to the Account
5 and, in turn, caused Defendant to realize an increase in its revenues generated by its dancing
6 team.

7 41. Upon information and belief, a large number of people have viewed the unlawful
8 copies of the Photographs on the Account.

9 42. Upon information and belief, Defendant at all times had the ability to stop the
10 reproduction and display of Plaintiff's copyrighted material.

11 43. Defendant's use of the Photograph, if widespread, would harm Plaintiff's
12 potential market for the Photographs.

13 44. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

14 **FIRST COUNT**

15 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

16 45. Plaintiff repeats and incorporates by reference the allegations contained in the
17 preceding paragraphs, as though set forth in full herein.

18 46. The Photographs are original, creative works in which Plaintiff owns valid
19 copyright properly registered with the United States Copyright Office.

20 47. Plaintiff has not licensed Defendant the right to use the Photograph in any
21 manner, nor has Plaintiff assigned any of its exclusive rights in the copyrights to Defendant.

22 48. Without permission or authorization from Plaintiff and in willful violation of
23 Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored,
24 reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff
25 thereby violating one of Plaintiff's exclusive rights in its copyrights.

26 49. Defendant's reproductions of the Photographs and display of the Photographs
27 constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural Telephone Service*
28

1 Co., Inc., 499 U.S. 340, 361 (1991).

2 50. Plaintiff is informed and believes and thereon alleges that the Defendant
3 willfully infringed upon Plaintiff's copyrighted Photographs in violation of Title 17 of the U.S.
4 Code, in that they used, published, communicated, posted, publicized, and otherwise held out
5 to the public for commercial benefit, the original and unique Photographs of the Plaintiff
6 without Plaintiff's consent or authority, by using them in the infringing post on the Account.

7 51. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is
8 entitled to an award of actual damages and disgorgement of all of Defendant's profits
9 attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven or,
10 in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for
11 each infringement pursuant to 17 U.S.C. § 504(c).

12 52. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court
13 in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and
14 costs pursuant to 17 U.S.C. § 505 from Defendant.

15 53. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is
16 entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17
17 U.S.C. § 502.

18 **JURY DEMAND**

19 54. Plaintiff hereby demands a trial of this action by jury.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE** Plaintiff respectfully requests judgment as follows:

22 That the Court enters a judgment finding that Defendant has infringed on Plaintiff's
23 rights to the Photograph in violation of 17 U.S.C. §501 et seq. and award damages and monetary
24 relief as follows:

- 25 a. finding that Defendant infringed Plaintiff's copyright interest in the
26 Photograph by copying and displaying without a license or consent;
27 b. for an award of actual damages and disgorgement of all of Defendant's
28

profits attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against each Defendant for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;

- c. for an award of actual damages or, in the alternative, statutory damages against each Defendant for each falsification or removal of copyright management information pursuant to 17 U.S.C. § 1202;
- d. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
- e. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505 and/or 17 U.S.C. §1203(b)(4) and (5);
- f. for pre judgment interest as permitted by law; and
- g. for any other relief the Court deems just and proper.

DATED: April 11, 2022

SANDERS LAW GROUP

By: /s/ Craig B. Sanders
 Craig B. Sanders, Esq.
 100 Garden City Plaza, Suite 500
 Garden City, NY 11530
 Tel: (516) 203-7600
 Email: csanders@sanderslaw.group
 File No.: 124349

Attorneys for Plaintiff